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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,013	08/28/2003	Dale M. Pitt	BOEI-1-1195	2109

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EXAMINER

DINH, TIEN QUANG

ART UNIT PAPER NUMBER

3644

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/653,013

Applicant(s)

PITT, DALE M.

Examiner

Tien Dinh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 11-32, 38, 39, 43-54, 60 and 61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-10, 33-37, 40-42, 55-59 and 62-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/2003.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of group I, species A in the reply filed on 7/26/04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 6, 7, 11-32, 38-39, 43-54, 60-61 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/26/04.

Please note that the claims that pertains the aerodynamic control surface arranged to move the airfoils do not read upon the elected species since species A do not seem to call for the aerodynamic control surface to move the airfoils.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hinge, pivot, and drive mechanism must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet,

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even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8-10, 33-37, 40-42, 55-59, and 62-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delaney or Gano et al (in the IDS) in view of <http://www.fanwars.be/plan/pic/X-wing.jpg>.

Delaney, the Examiner strongly feels, discloses a morphing airfoil system that has a first airfoil and a second airfoil that is attached to the aircraft near the first root of the first airfoil. The airfoil system (although silent in Delaney) do indeed has hinges, pivots, hub, and drive mechanism to move the airfoils apart or move them together to form a single airfoil. The figures

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of Delaney don't seem to show that the airfoil system "morphs". Gano et al also discloses a wing morphing system (see figure 9) but is silent on the moveable connection. However, the website <http://www.fanwars.be/plan/pic/X-wing.jpg> shows that an "X-wing aircraft" as shown in Delaney do indeed have a morphing airfoil system (with moveable connections) that has two airfoils that move apart and "merge" together to foil a single airfoil is well known in the art. Please also know that the X-wing first appeared in the movie Star Wars that was known to the public in the 1970s.

Thus it would have been obvious to one skilled in the art to have made the airfoil system of Delaney or Gano et al morph (via a moveable connection) as taught by <http://www.fanwars.be/plan/pic/X-wing.jpg> to allow the aircraft to have different wing configurations.

Please note that to make an aircraft unmanned is well known in this day and age.

Please also note that the "moveable connection" of Delaney in view of <http://www.fanwars.be/plan/pic/X-wing.jpg> allows the first and second airfoil to move in a first direction approximately perpendicular to at least one of first chord and the second cord.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Apgar, Gerhardt et al, Lapidot, Smith, Haworth, Diago, Arena, German '221, Garrett, and Chen disclose aircraft means.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tien Dinh whose telephone number is 703-308-2798. The examiner can normally be reached on 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TD

A handwritten signature in cursive script, appearing to read "Tien Dinh".